

O. R. MAXFIELD

APRIL 30, 1942.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the following

REPORT

[To accompany S. 2279]

The Committee on Claims, to whom was referred the bill (S. 2279) for the relief of O. R. Maxfield, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments:

On page 1, line 7, strike out the figures "\$1,032.11" and insert "\$552.52".

On page 1, line 9, strike out the word "mutual".

This bill, as amended, provides for the payment of \$552.52 to O. R. Maxfield, of Temple, Tex., in full satisfaction of his claim against the United States for damages sustained as a result of a mistake in connection with the price quoted on 18 sets of plot equipment for infiltrometers built and furnished to the Department of Agriculture, Soil Conservation Service, at Beltsville, Md., and Asheville, N. C., on July 17, 1940, and August 6, 1940, under purchase order dated June 19, 1940.

It appears from the records in this case that the United States Department of Agriculture, Washington, D. C., invited bids to be opened June 5, 1940, for furnishing plot equipment. In response thereto O. R. Maxfield submitted a bid dated June 1, 1940, wherein he inserted in the total amount column opposite the quantity of 18 sets the amount of \$439. Subsequently, the Soil Conservation Service advised the bidder by telegram dated June 13, 1940, that he had been awarded the contract for furnishing the equipment. By telegram of June 13, 1940, the contractor alleged that he had made an error in his bid in that the price quoted was for 8 sets rather than 18 sets, as specified in the invitation to bid. The Soil Conservation Service advised the contractor by telegram of June 14, 1940, that his bid clearly showed the price quoted as \$439 and suggested performance of the contract. The equipment was furnished and Mr. Maxfield was allowed the sum of \$364.04, representing his bid price of \$439, less freight charges, and prompt payment discount.

In reporting on the claim the Comptroller General, who has no objection to the consideration of the bill, makes this observation:

Although the facts disclosed would appear to negative any legal liability on the Government to make any additional payment to Mr. Maxfield for the equipment furnished under his contract, there appears no room for doubt that he made an error in his bid as alleged, and the contractor has presented evidence indicating a total expenditure of \$904.14, exclusive of profit, in furnishing equipment for which he has been paid only \$364.04. In addition, it appears that the error was alleged promptly after receipt of the award, and that if payment should be authorized by the Congress on the basis of the alleged intended bid of \$987.84, the cost of the equipment to the Government still would be considerably less than the price of \$1,141.20 quoted by the only other bidder. Accordingly, the bill for Mr. Maxfield's relief does not appear to be wholly without merit.

The Assistant Secretary of Agriculture recommends that Mr. Maxfield be allowed, in addition to the amounts previously paid to him, the sum of \$552.52.

Additional facts will be found in the following communications, which are appended hereto and made a part of this report.

DEPARTMENT OF AGRICULTURE,
Washington, March 13, 1942.

Hon. PRENTISS M. BROWN,
Chairman, Committee on Claims,
United States Senate.

DEAR SENATOR BROWN: Your letter of February 18, 1942, requesting a report on S. 2279, a bill for the relief of O. R. Maxfield, has been received.

Bill S. 2279, as presented, indicates that the claim is made by Mr. Maxfield as a result of a "mutual mistake" in connection with the price quoted on the equipment. In this regard it has been established that the mistake was solely that of the claimant in the preparation of his bid, and it is not considered that any responsibility therefor attaches to the Government. There are enclosed for consideration copies of the following documents:

1. Undated statement of fact, prepared by the contracting officer, James M. Locknane, Acting Chief, Division of Purchase, Sales, and Traffic, Department of Agriculture.

2. Certificates of settlement No. 0627306 and No. 0624473, issued by the Comptroller General of the United States, in the amounts of \$364.04 and \$91.56, respectively.

The amount of \$1,032.11 claimed by Mr. Maxfield includes the sum of \$91.56 for extra crating which was allowed the claimant by the General Accounting Office under certificate of settlement No. 0624473.

The remaining portion of the claim, in the amount of \$940.55, has been computed by the vendor on the basis of his estimated cost of the equipment delivered to the Government, or \$994.55, less freight allowance of \$54. However, it is considered that settlement should be computed on the basis of \$987.84, less \$71.28 actual freight allowance, or \$916.56, representing the fair and reasonable market value of the equipment as approved by the contracting officer.

As indicated by reference to certificate of settlement No. 0627306, the General Accounting Office has previously allowed the claimant the sum of \$364.04. It is, therefore, the recommendation of this Department that the claimant be allowed, in addition to the amounts previously paid to him, the sum of \$552.52.

Sincerely,

GROVER B. HILL, Assistant Secretary.

STATEMENT OF FACT IN CONNECTION WITH THE MATTER OF A CONTRACT WITH
O. R. MAXFIELD, UNITED STATES DEPARTMENT OF AGRICULTURE, 8844, DATED
JUNE 12, 1940, COVERING THE FURNISHING OF PLOT EQUIPMENT TO THE SOIL
CONSERVATION SERVICE AT BELTSVILLE, MD.

The record discloses that only 2 bids were submitted on the plot equipment in the amounts of \$1,141.20 less 1 percent and \$439 less 1 percent for the 18 sets specified. Notification of award was telegraphed by the Service Operations Division, Soil Conservation Service, to O. R. Maxfield on June 13, 1940, and, on

the same date, he replied by wire, in substance, that 18 units could not be delivered for \$439, as it was believed an error in extension was made in the bid. It was further claimed that a unit price of \$54.88 per set should govern, making a total bid of \$987.84 for 18 sets inasmuch as 8 units were used in computing the total price instead of 18.

On June 14, 1940, the Service Operations Division of the Soil Conservation Service wired the contractor explaining in detail the nature of his bid and the procedure for handling such situations. He was advised that a careful recheck of the original bid established the fact that only a lot price of \$439 was submitted. The urgent need of the equipment was stressed, and the bidder was informed that the Comptroller General alone has authority to recognize the claim of error. With these facts made known, the bidder was requested to proceed with performance and submit the details of the error, including work sheets, with the invoice, for final determination by the Comptroller General as to the amount to be paid.

On June 15, 1940, O. R. Maxfield replied to the telegram cited above indicating that he would like to have some assurance from the Comptroller General that payment would be made in an amount approximating \$987.84 before proceeding with construction, providing work sheets show only a reasonable profit. It was further stated that work would be commenced immediately upon receipt of such assurance by the Comptroller General.

Under date of June 18, 1940, the Service Operations Division of the Soil Conservation Service wired O. R. Maxfield that award was made in good faith on lump sum quoted prior to receiving any notice of possible error, and no prediction could be made as to the Comptroller General's decision, nor could an informal ruling be obtained. It was pointed out that if the Comptroller General allowed the correction to stand, the corrected amount was still low, and, if the correction was not allowed and performance refused, the Bureau would be forced to declare the bidder in default, purchase the material elsewhere, charging the excess cost, if any, to his account. The bidder was further informed that, considering the points of procedure, it would appear to be to the best interest of all concerned for him to proceed with performance and submit all pertinent facts with the invoice.

Final agreement to proceed with performance was received from O. R. Maxfield in a telegram dated June 18, 1940. He advised that, believing the Government would be fair in the payment for the 18 sets, he would proceed with construction and delivery and submit the work sheet with his invoice.

As evidenced by the record, delivery of part of the equipment was made to Asheville, N. C., on account of an immediate need for such equipment at that location. Government bills of lading were issued to cover the entire shipment from Temple, Tex., in order to fulfill a particularly urgent need at Asheville, N. C., arising subsequent to award and to enable a common basis for commercial freight deduction, since award was made f. o. b., Beltsville, Md. By the diversion, a portion of the equipment was delivered on a Government bill of lading to each location; i. e., Beltsville, Md., and Asheville, N. C.

As to the claim of O. R. Maxfield for compensation in the amount of \$987.84 for the 18 sets of plot equipment, an actual cost statement furnished in affidavit form shows that the equipment cost \$994.55, including 10 percent profit. The estimated cost work sheet also furnished by the contractor, which figures served as a basis for submitting bid, indicates that the estimated cost was \$54.88 per set, or a total of \$987.84 for 18 sets.

In view of the circumstances and facts of record, and in the light of data furnished showing actual and estimated cost, the contractor's claim for payment of \$987.84 less deduction of proper freight allowance is considered to represent a fair and reasonable market value of the equipment. It is therefore recommended that payment be made accordingly.

JAMES M. LOCKNANE,
Acting Chief, Division of Purchase, Sales, and Traffic.

I certify this to be a true and correct copy.

C. E. FRYE,
Junior Administrative Assistant.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, April 26, 1941.

Hon. TOM CONNALLY,
United States Senate.

MY DEAR SENATOR: Further reference is made to your communication of March 31, 1941, and enclosures, acknowledged April 5, requesting a report on the claim of O. R. Maxfield, 111 South First Street, Temple, Tex., for an amount alleged to be due for 18 sets of plot equipment for North Fork infiltrrometer furnished the Department of Agriculture, Soil Conservation Service, Beltsville, Md., and Asheville, N. C., under contract consisting of his bid dated June 1, 1940, and acceptance of June 12, 1940.

The United States Department of Agriculture, Washington, D. C., invited bids to be opened June 5, 1940, for furnishing equipment described in the invitation as follows:

"PLOT EQUIPMENT for North Fork Infiltrrometer. To be constructed in accordance with attached specifications and drawings (drawings No. 310-A and 314-A of the U. S. Forest Service). Each set to consist of 51 pieces as itemized in section I of the attached specifications.

"DELIVERED: Beltsville, Md. (T-0324) 18 sets \$---- \$----."

In response thereto O. R. Maxfield submitted a bid dated June 1, 1940, wherein he inserted in the total amount column opposite the quantity of 18 sets the amount of \$439. The Soil Conservation Service advised the bidder by telegram dated June 13, 1940, that he had been awarded the contract for furnishing the equipment. By telegram of June 13, 1940, the contractor alleged that he had made an error in his bid in that the price quoted was for 8 sets rather than 18 sets, as specified in the invitation to bid. The Soil Conservation Service advised the contractor by telegram of June 14, 1940, that his bid clearly showed the price quoted as \$439 and suggested performance of the contract. By telegram of June 15, 1940, the contractor stated that before proceeding he desired to be assured that approximately \$984.84 would be paid for the equipment. The Soil Conservation Service replied by telegram dated June 18, 1940, as follows:

"Reurtel June 15 concerning your claim of error in bid under USDA-8844. Award was made in good faith on lump sum quoted by you prior to receiving any notice of possible error. We cannot predict decision of Comptroller General and we cannot obtain an informal ruling. Formal consideration would require approximately 3 weeks. If the Comptroller General allowed your correction to stand you would receive the corrected amount as this price is still low compared with other bids. If the Comptroller General did not allow your correction and you refused to perform, we would be forced to declare you in default and purchase the material elsewhere, charging the excess cost, if any, to your account. Considering these points of procedure, it would appear to be to the best interest of all concerned for you to proceed with performance and submit all pertinent facts, including work sheets, with your invoice. If you do not agree to this plan kindly forward all information which you now have and we will submit the facts formally to the Comptroller General."

The equipment was furnished and by settlement No. 0627306, dated March 7, 1941, Mr. Maxfield was allowed the sum of \$364.04, representing his bid price of \$439, less \$71.28 as full commercial freight from Temple, Tex., to Beltsville, Md., the equipment having been shipped on Government bills of lading, and less \$3.68 covering prompt-payment discount.

The established rule is that where a bidder has made a mistake in the submission of a bid and the bid has been accepted, he must bear the consequences thereof unless the mistake was mutual or the error was so apparent that it must be presumed the contracting officer knew of the mistake and sought to take advantage thereof. 26 Comp. Dec. 286; 6 Comp. Gen. 526; 8 id. 362.

The Standard Government Instructions to Bidders, to which the attention of all bidders was directed in the invitation, provided in paragraphs 14 and 19, as follows:

"14. *Withdrawal of bids.*—Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

"19. *Errors in bid.*—Bidders or their authorized agents are expected to examine the maps, drawings, specifications, circulars, schedule, and all other instructions pertaining to the work, which will be open to their inspection. Failure to do so will be at the bidder's own risk, and he cannot secure relief on the plea of error in the bid. In case of error in the extension of prices the unit price will govern."

The invitation issued in this case was clear and unambiguous and left no room for doubt that 18 sets of plot equipment were required to be furnished. The responsibility for the preparation of the bid submitted in response thereto was, of course, upon the bidder. Although O. R. Maxfield contends that its bid was submitted on the basis of furnishing only 8 sets of plot equipment, nothing was inserted in the bid, or otherwise shown at the time the bid was submitted, to indicate such an intention. The bidder did not insert any unit price in its bid and, consequently, there was no basis for the contracting officer to verify the bid price inserted in the total amount column. It is clear that such mistake as was made in the bid was due to the failure of the bidder to properly note the number of plot equipments required to be furnished the Government. Such error was due solely to the negligence of the bidder and was not induced or contributed to in any manner by the Government. The error was unilateral and not mutual and, therefore, does not entitle the bidder to relief. *Ellicott Machine Company v. United States*, 44 Ct. Cls. 127; and *American Water Softener Company v. United States*, 50 Ct. Cls. 209.

The Supreme Court of the United States in the case of *Grymes v. Sanders et al.*, 93 U. S. 55, 61, stated that—

"Mistake, to be available in equity, must not have arisen from negligence where the means of knowledge were easily accessible. The party complaining must have exercised at least the degree of diligence 'which may be fairly expected from a reasonable person.'"

In the case of *Brown v. Levy*, 29 Tex. Civ. App. 389, 69 S. W. 255, the defendant invited bids for the construction of a building and in response thereto the plaintiff proposed to construct the building for \$64,000 and such bid was accepted. Thereafter the plaintiff discovered that in adding up his bid an error of \$10,000 had been made. An action was thereupon brought to recover the amount of a certified check accompanying the bid. The court held that the bidder could not be released from his bid because of the alleged error stating that when the plaintiff offered to build the house for a specified sum, and the defendant accepted the offer, a binding contract was made, and it was of no consequence, insofar as the validity of the contract was concerned, that the plaintiff had made a miscalculation in forming his preliminary estimates.

There were only two widely variant bids received in response to the invitation issued in this case. Under the circumstances, there was no more reason for the contracting officer of the Government to consider the low bid of O. R. Maxfield too low than for considering the high bid too high. The award appears to have been made in good faith. See telegram of Soil Conservation Service dated June 18, 1940, quoted above. The bid of O. R. Maxfield bears the date of acceptance by the contracting officer of June 12, 1940, and the telegram notifying the bidder of the award was sent on June 13, 1940. The record indicates that at the time of acceptance of the bid of O. R. Maxfield, the contracting officer was not on notice of the error alleged by the bidder. The acceptance of the bid under the circumstances here involved gave rise to a valid and binding contract. *United States v. New York and Porto Rico Steamship Company*, 239 U. S. 88; *United States v. Purcell Envelope Company*, 249 U. S. 313; *American Smelting and Refining Company v. United States*, 259 U. S. 75. The acceptance vested in the United States the right to have performance strictly in accordance with the terms of the contract and no officer of the Government has authority to divest the Government of such vested right or to allow compensation for performance in an amount greater than that agreed upon in the contract. *Brawley v. United States*, 96 U. S. 168; *Simpson v. United States*, 172 U. S. 372; *United States v. American Sales Company*, 27 F. (2d) 389, affirmed in 32 F. (2d) 141, and certiorari denied, 280 U. S. 574. As stated by the United States Court of Claims in the case of *The Pacific Hardware and Steel Company v. United States*, 49 Ct. Cls. 327, 335:

"It is unquestionably true that an official of the Government is not authorized to give away or remit a claim due the Government. This rule is grounded in a sound public policy and is not to be weakened. * * *

In view of the facts in the case and the authorities herein cited, I find no legal basis for the allowance of any amount in addition to the contract price heretofore paid O. R. Maxfield.

Letter of March 15, 1941, from O. R. Maxfield, is returned herewith as requested.

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, August 4, 1941.

Hon. TOM CONNALLY,
United States Senate.

MY DEAR SENATOR: I have your communication of July 26, 1941, with enclosure, dated July 15, 1941, from O. R. Maxfield, 111 South First Street, Temple, Tex., as follows:

"Reference is made to your letter of April 29, in which you sent me a communication to you from the Comptroller General concerning my claim with the Soil Conservation Service.

"As I have not had any further communication from you, I would like to know if you have made any further progress in my behalf to collect this just account.

"I feel the Comptroller General will not allow this account as I am sure he must base his findings on similar cases, and due to the fact I made an error in the preparation of my bid seems to be his only reason for not paying the account.

"Some years ago the Government made an error of several thousand dollars in my favor which I was glad to correct, and I believe under the circumstances and the approval of the Soil Conservation Service of the account, I should be paid for my labor and materials furnished the Government.

"I understand that similar accounts have been paid in the past by being included in a deficiency appropriation."

Mr. Maxfield's letter apparently has reference to his claim for an amount alleged to be due for 18 sets of plot equipment for North Fork infiltrometer furnished the Department of Agriculture, Soil Conservation Service, under contract, consisting of his bid dated June 1, 1940, and acceptance of June 12, 1940. The facts in respect of the claim were set forth in full in my letter of April 26, 1941, to you, together with the reasons why I could find no legal basis for the allowance of any amount in addition to the sum of \$364.04 allowed Mr. Maxfield under the provisions of his contract by settlement No. 0627306, dated March 7, 1941, representing his bid price of \$439, less \$71.28 freight deduction and \$3.68 discount.

With reference to Mr. Maxfield's statement that he understands that similar accounts have been paid in the past by being included in a deficiency appropriation, as you know, such appropriations generally are limited to provision for expenditures previously authorized by law, including judgments of the United States courts and claims audited by this Office. The payment of claims as to which there is no legal liability on the Government but which the Congress deems meritorious usually is provided for by private relief legislation. Whether enactment of a private bill for the relief of Mr. Maxfield in this case is warranted is, in the first instance, for the consideration of the Congress.

The letter of July 15, 1941, from Mr. Maxfield, is returned herewith as requested.

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States.

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